

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

13 CIV 844

HUMANIX PUBLISHING, LLC,

Plaintiff,

v.

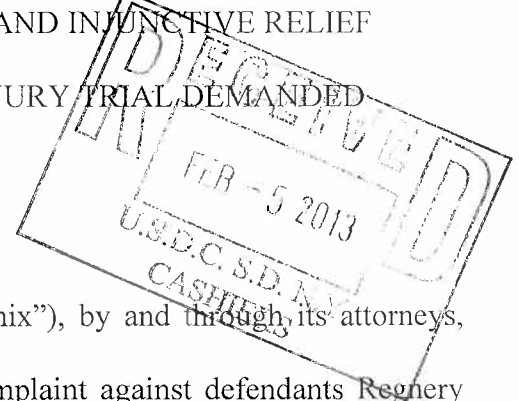
REGNERY PUBLISHING, INC. and BETSY  
McCAUGHEY,

Defendants.

12 Civ. \_\_\_\_\_

COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED



Plaintiff Humanix Publishing, LLC (“Humanix”), by and through its attorneys, Satterlee Stephens Burke & Burke LLP, as and for its complaint against defendants Regnery Publishing, Inc. (“Regnery”) and Betsy McCaughey (“McCaughey” and together with Regnery “Defendants”) alleges as follows:

#### NATURE OF THE ACTION

1. This is an action for copyright infringement under 17 U.S.C. §§ 501 et seq. and based upon Defendants’ willful unauthorized copying of a manuscript produced by McCaughey as a work for hire for Humanix. This is also an action for breach of contract on the part of McCaughey and tortious interference with contract by Regnery due to her willful disregard of a non-compete clause in her agreement with Humanix. Plaintiff seeks to permanently enjoin Defendants from selling the infringing work.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act, 17 U.S.C. §§ 101 et seq.

3. Venue lies in this district pursuant to 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events or omissions giving rise to this claim occurred in this judicial district, and because, upon information and belief, defendant McCaughey resides in this judicial district. In addition, venue lies in this district because defendants caused copies of their infringing work to be distributed and sold in this judicial district.

#### THE PARTIES

4. Humanix is a limited liability corporation, organized under the laws of the State of Florida, having its principal place of business at 560 Village Blvd., Suite 120, West Palm Beach, Florida 33409.

5. Upon information and belief, Regnery is a corporation organized under the laws of the State of Maryland, having its principal place of business at One Massachusetts Ave., N.W., Washington, D.C. 20001.

6. McCaughey is a natural person who, upon information and belief, resides at 1111 Park Avenue, New York, New York 10128.

#### FACTS

##### The Services Agreement

7. Humanix and McCaughey entered into an agreement, on or about January 30, 2012 (the “Services Agreement”), pursuant to which McCaughey as Author was to write a book under the working title *How to Survive ObamaCare* to be published by Humanix (the “Work”). A copy of the Services Agreement is attached as Exhibit A.

8. The Services Agreement contains the following provisions:

(a) The Work and any materials delivered by McCaughey are and will be “works made for hire” within the meaning of the Section 101 of the Copyright Act,

17 U.S.C. § 101. To the extent that the work delivered did not constitute a work for hire, McCaughey assigned to Humanix all rights to the work. Ex. A, ¶ 6(c).

(b) Payment in the amount of \$5,000 to McCaughey is full compensation for the Work. Ex. A, ¶ 3.

(c) McCaughey will refrain from authoring, publishing or contributing to any other work which is in direct competition with the Work. Ex. A, ¶ 6(d).

(d) The Services Agreement may be terminated by Humanix if McCaughey fails to provide satisfactory drafting, editing and promotion services, or fails or refuses to make revisions to the Work requested by Humanix. Ex. A, ¶ 9.

(e) Paragraphs 5, 6 and 7 of the Services Agreement survive termination of the Services Agreement. Ex. A, ¶ 8.

9. On or about February 21, 2012, McCaughey delivered the Work, entitled *ObamaCare Explained: What the Nation's New Health Care System Means for You*, to Humanix.

10. Humanix paid McCaughey \$5,000 by check in full compensation for her services under the Agreement.

11. The Work was unsatisfactory to Humanix, and Humanix advised McCaughey that the Work was unacceptable and required revisions to make it acceptable.

12. McCaughey refused to revise the Work as requested.

13. Humanix therefore terminated the Services Agreement by written notice dated February 29, 2012 (the "Termination Letter").

14. The Termination Letter reminded McCaughey that paragraphs 5, 6 and 7 survive termination of the Services Agreement.

Copyright Registration of the Work

15. On January 17, 2013, Humanix applied for copyright registration of the Work.

16. The Work was granted registration and assigned Registration Number TXu 1-839-263. A copy of the registration certificate is annexed hereto as Exhibit B.

The Humanix Book

17. Humanix, as permitted under the Services Agreement, decided in its discretion not to publish the Work that had been submitted by McCaughey.

18. On October 2, 2012, Humanix published its own separate book by Nicholas J. Tate entitled *ObamaCare Survival Guide: The Affordable Care Act and What It Means for You and Your Healthcare* (the “Tate Book”).

The Infringing Books

Regnery Print Book

19. In or about early December 2012, Humanix became aware that Regnery was about to publish a book by McCaughey to be called *Surviving Obamacare*.

20. Humanix was unaware of the content of the book at the time, including that it was a guide book that was nearly identical to the Work, but contacted Regnery to ask that it change the title so as not to confuse consumers in light of the title of the Tate Book.

21. On or about December 11, 2012, Humanix informed Regnery that McCaughey had entered in a contract with Humanix for a guide book and that the publication of *Surviving Obamacare* potentially violated Humanix’s contract with McCaughey. At no point in the discussion did Humanix waive its contractual rights.

22. On or about December 12, 2012, Regnery agreed to change the title of the upcoming book by McCaughey.

23. On January 14, 2013, Regnery published the book authored by McCaughey under the title *Beating ObamaCare: Your Handbook for the New Healthcare Law* (the “Regnery Book”).

24. The Regnery Book is available through Amazon.com, barnesandnoble.com as well as at brick and mortar booksellers including Barnes & Noble.

McCaughey ebook

25. Previously, in or about March 2012, McCaughey had published and offered for sale as an electronic book a nearly identical copy of the Work under the title *Decoding the Obama Health Law: What You Need To Know* (the “McCaughey Book”).

26. Although Newsmax learned of the McCaughey Book at or about the time of its publication, it was unaware that the book was a guide book that was similar in content to the Work. Prior to publication of the McCaughey Book, McCaughey had published widely on the Affordable Care Act, both in at least one earlier ebook and via blogs and other articles, though not in the form of a guide book. Humanix thus had no reason to believe that this McCaughey book, the title of which was different than both the working title under the Services Agreement and the Work submitted to Humanix, was a guide book or the same as the Work under the Services Agreement.

27. In point of fact, in addition to the Regnery Book, the McCaughey Book continues to be available for purchase as an ebook through Amazon.com and Barnesandnoble.com.

Defendants' Use of the Work in the Infringing Books

28. The Regnery Book is merely a minimally revised edition of the Work, as a comparison of a few excerpts from the Regnery Book and the Work clearly shows:<sup>1</sup>

The Work	The Regnery Book
<p>If you're clueless about the Obama health law, you're not alone. Most people have heard the political bickering and supercharged rhetoric, but they don't know what the law actually says.</p>	<p>If you're clueless about the Obama health law, you're not alone. Most people have heard the political bickering and supercharged rhetoric, but they don't know what the law actually says.</p>
<p>You'll need to know soon, because this law will affect you and your entire family. The new health law is not just about helping the uninsured (a worthy goal). ObamaCare will change how everyone gets medical care. It will even regulate the decisions your doctor can make. Most of the law doesn't go into effect until 2013 and 2014. You haven't felt the effects yet, but you will.</p>	<p>But you'll need to know soon, because this law will affect you and your entire family. The new health law is not just about helping the uninsured (a worthy goal). Obamacare will change how everyone in America gets medical care. It will even regulate the decisions your doctor can make. You haven't felt the effects yet, but you will.</p>
<p>One reason for the political rancor over this new law is that so few people, including members of Congress, have read it. How can the American people settle this national argument, when they don't have the facts? The law is a nearly unreadable 2,572 pages. Why so long? The framers of the U.S. Constitution created the entire federal government in just eighteen pages. If only the Washington bigwigs of today showed the same restraint.</p>	<p>One reason for the political rancor over this new law is that so few people—including even members of Congress—have read it. The law is a nearly unreadable 2,572 pages. Why so long? The framers of the U.S. Constitution created the entire federal government in just eighteen pages. If only the Washington bigwigs of today showed the same restraint.</p>
<p>In addition to the law's length, its obfuscating language gives readers the runaround. Who could understand this gobbledygook?</p>	<p>In addition to the law's length, its obfuscating language gives readers the runaround. Who could understand this gobbledygook?</p>
<p>– Chapter One: <i>Decoding ObamaCare</i></p>	<p>– Chapter Two: <i>Decoding the Obama Health Law</i></p>
<p>No part of Obamacare is more controversial than the “individual mandate.”</p>	<p>No part of Obamacare is more controversial than the “individual mandate.”</p>

<sup>1</sup> Footnotes contained within the excerpts set forth herein and following paragraph 25 have been removed for comparison purposes.

### The Work

For the first time in history, the federal government is requiring most Americans to buy a product – in this case, health insurance. Here is what the law actually says:

Section 1501 of the Obama health law requires nearly everyone to enroll in a one-size fits all, government designed health insurance plan. It's called a "qualified plan." It can be sold by a private insurance company such as Aetna or Cigna, a regional insurer known in your part of the country, or a not-for-profit, or it can be coverage provided by a big employer that self-insures. The point is that to be "qualified," it has to include what the federal government deems "essential benefits." The law empowers the Secretary of Health and Human Services to decide what is "essential."

– Chapter Four:  
*The Individual Mandate*

You've heard President Obama pledge many times that under the new law, insurers would have to compete "based on quality and cost," and consumers wouldn't have to worry about differences in what is covered or what the fine print says from plan to plan. Like comparing apples to apples.

It can sound good. But keep in mind, it also means only having one choice: apples. The trade-off is more uniformity and fewer choices. Imagine the federal government telling car makers, "no more hatchbacks or convertibles, offer only four-door sedans so consumers can compare cars on quality and cost" and not get confused.

– Chapter Five:  
*Healthcare Exchanges*

If you're under 30 and don't think you'll need much healthcare, the government allows you to meet the individual mandate requirement by purchasing a "catastrophic

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Imagine the federal government telling car makers, "no more hatchbacks or convertibles, offer only four-door sedans so consumers won't get confused."

– Chapter Seven:  
*The Health Insurance Exchange—  
It's Not Like Shopping at the Mall*

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### The Work

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No matter what your age, you’ll be compelled to enroll in a plan and pay what the government says you can afford. The Health Insurance Exchange is one place to do that.

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What the research shows is that Medicaid patients get worse care but not cheaper care. Their inferior care results in more complications, and that leads to longer hospital stays and higher costs. It’s only reasonable to question whether expanding Medicaid is a good idea when patients already on Medicaid are getting dangerous care at high prices.

Heart patients on Medicaid are less likely to receive angioplasty when they need it, and asthmatic children on Medicaid don’t see specialists. In fact, few specialists in any field take Medicaid. When people with heart disease can’t see a cardiologist, expanding the Medicaid program and worsening the shortage could be deadly. No wonder health advocates are concerned.

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What the research shows is that Medicaid patients get worse care—but, ironically, not cheaper care. The inferior care they get results in more complications, and the complications lead to longer hospital stays and higher costs. It’s only reasonable to question whether expanding Medicaid is a good idea when patients already on Medicaid are getting dangerous care at high prices.

Heart patients on Medicaid are less likely to receive angioplasty when they need it, and asthmatic children on Medicaid don’t see specialists. In fact, few specialists in any field take Medicaid. When people with heart disease on Medicaid can’t see a cardiologist, expanding the Medicaid program and worsening the shortage of specialists could be deadly. No wonder health advocates are concerned.

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## The Work

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Medicare Advantage is singled out for big funding cuts under the Obama health law.

Medicare Advantage funding will be slashed by 27% -- meaning \$3,700 less per year for each senior enrolled by 2017. The result is that plans will offer fewer extras, and many plans are expected to go out of business entirely. Medicare actuaries predict that enrollment will plummet to half what it otherwise would be. The President promised, "If you like your health care plan, you'll be able to keep your health care plan, period." But that's definitely not true for the 7.4 million seniors expected to be lose the choice of Medicare Advantage.

Chapter Eleven:  
*Medicare*

How much leeway will doctors have to order the tests and treatments they think are needed? It's hard to say, because the stimulus legislation empowered the government to make the standard of "meaningful use" more "stringent" over time.

The Obama health law extends control of doctors beyond what they do for patients in government programs. For the first time in history, this law empowers the federal government to dictate how doctors treat privately insured patients --- patients who aren't on Medicaid or Medicare but instead

## The Regnery Book

than traditional Medicare. Medicare Advantage was launched in 2003, to give seniors the option of choosing a private health plan with the government paying most of the cost. These plans cost the government (and thus taxpayers) about 10 percent more, but they also provide seniors with more benefits. They are hugely popular because of extras such as vision and dental care—and occasionally even gym memberships—that traditional Medicare doesn't cover.

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**The Work**

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– Chapter Thirteen

*Physicians Diagnose Obamacare*

**The Regnery Book**

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29. Likewise, the McCaughey Book is a barely revised edition of the Work, as a comparison of excerpts from the McCaughey Book and the Work clearly shows:

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If you're clueless about the Obama health law, you're not alone. Most people have heard the political bickering and supercharged rhetoric, but they don't know what the law actually says.

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**The McCaughey Book**

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**The Work**

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– Chapter Five:  
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If you’re under 30 and don’t think you’ll need much healthcare, the government allows you to meet the individual mandate requirement by purchasing a “catastrophic plan.” The name is a bit misleading. Catastrophic health insurance generally means the kind almost everyone had two generations ago. It covered the large, unexpected costs that occur when you have an accident or get rushed to the hospital with a serious illness. This “catastrophic” option, open only to the young, also includes preventive care and three visits to your primary care doctor per year.

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**The McCaughey Book**

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**The Work**

Medicaid program and worsening the shortage could be deadly. No wonder health advocates are concerned.

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**The McCaughey Book**

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– Chapter Seven:  
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Chapter Ten:  
*Medicare: Seniors Pay for Obamacare*

How much leeway will doctors have to order the tests and treatments they think are needed? It's hard to say, because the stimulus legislation empowered the government to make the standard of "meaningful use" more "stringent" over time.

**The Work**

The Obama health law extends control of doctors beyond what they do for patients in government programs. For the first time in history, this law empowers the federal government to dictate how doctors treat privately insured patients --- patients who aren't on Medicaid or Medicare but instead have private insurance from companies such as Aetna or Cigna. Even if you pay your own premium, the government is still in charge. For many healthcare advocates as well as physicians, this is the most important issue of all: the transfer of decision making authority from the doctor at your bedside to the federal government.

– Chapter Thirteen  
*Physicians Diagnose Obamacare*

**The McCaughey Book**

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– Chapter Twelve  
*Physicians Diagnose Obamacare*

30. As noted above, upon receipt of the manuscript from McCaughey, Humanix determined that it was unacceptable for publication. It determined not to publish the manuscript and has not published it to this day.

31. When McCaughey refused to provide necessary edits, Humanix hired a new author to draft a book and worked diligently to have the book ready for publication.

32. Humanix published the Tate Book (*ObamaCare Survival Guide*) on October 2, 2012. The list price for the book is \$19.95. It is available on Amazon.com for \$11.97 and on barnesandnoble.com for \$12.20.

33. Both the Regnery Book (*Beating Obamacare*) and the McCaughey Book (*Decoding The Obama Health Law*) are directly competing with the Tate Book in the marketplace.

34. The list price for the Regnery Book is \$14.95. It is available for purchase on Amazon.com for \$8.97 and on Barnesandnoble.com for \$9.05.



35. The McCaughey Book is available for \$4.99 from both Barnesandnoble.com and Amazon.com.

36. When the term “Obamacare” or “Obamacare Survival Guide” is searched on Amazon, the results list includes the Regnery Book immediately after the Tate Book and the McCaughey Book is either immediately after the Regnery Book or only a couple of items later in the results list. Given the lower pricing for the directly competitive books, Humanix is undoubtedly losing sales of the Tate Book to these infringing books.

37. In addition to the lost sales of its own book, by virtue of the publication of the books by McCaughey and Regnery, Humanix has lost the ability to control when, where and if it will publish the manuscript it commissioned from McCaughey and is thereby irreparably harmed.

FIRST CAUSE OF ACTION

(Against Defendants: Copyright Infringement in Violation of 17 U.S.C. §§ 501 et seq.)

38. Humanix repeats and realleges each and every allegation heretofore made in paragraphs 1 through 37 as if fully set forth herein.

39. Humanix is the owner of the copyright in the Work pursuant to the Agreement.

40. Humanix has complied, in all respects, with the Copyright Laws of the United States.

41. Humanix duly registered the Work.

42. Publication of the Regnery Book violates Humanix’s exclusive rights pursuant to 17 U.S.C. § 106.

43. By publishing and selling copies of the Regnery Book in interstate commerce, Defendants knowingly and willfully have infringed and continue to infringe Humanix's copyright.

44. As a result of this infringement, Humanix has been and will continue to be severely and irreparably damaged.

45. Humanix is entitled to an injunction restraining Defendants, as well as all of their officers, agents, and employees, and all other persons acting in concert with them from engaging in further such acts in violation of federal copyright laws.

46. Humanix is further entitled to recover from defendant the damages it has sustained and will sustain as well as such gains, profits and advantages Defendants have obtained as a result of Defendants' wrongful acts.

SECOND CAUSE OF ACTION

(Against McCaughey: Copyright Infringement in Violation of 17 U.S.C. §§ 501 et seq.)

47. Humanix repeats and realleges each and every allegation heretofore made in paragraphs 1 through 46 as if fully set forth herein.

48. Humanix is the owner of the copyright in the Work pursuant to the Agreement.

49. Humanix has complied, in all respects, with the Copyright Laws of the United States.

50. Humanix duly registered the Work on January 17, 2013.

51. Publication of the McCaughey Book violates Humanix's exclusive rights pursuant to 17 U.S.C. § 106.

52. By publishing and selling copies of the Infringing Books in interstate commerce, McCaughey knowingly and willfully has infringed and continues to infringe Humanix's copyright.

53. As a result of this infringement, Humanix has been and will continue to be severely and irreparably damaged.

54. Humanix is entitled to an injunction restraining McCaughey, as well as all of her officers, agents, and employees, and all other persons acting in concert with her from engaging in further such acts in violation of federal copyright laws.

55. Humanix is further entitled to recover from McCaughey the damages it has sustained and will sustain as well as such gains, profits and advantages McCaughey has obtained as a result of McCaughey's wrongful acts.

THIRD CAUSE OF ACTION  
(Against McCaughey: Breach of Contract)

56. Humanix repeats and realleges each and every allegation pleaded in paragraphs 1 through 55 as if fully set forth herein.

57. Humanix and McCaughey are parties to the Services Agreement.

58. By publishing the McCaughey Book and assisting in the publication of the Regnery Book, McCaughey has breached the Services Agreement by authoring, publishing or contributing to works in direct competition with the Work.

59. By reason of McCaughey's breach of the Services Agreement, Humanix has been injured in an amount to be established at trial.

FOURTH CAUSE OF ACTION  
(Against Regnery: Tortious Interference with Contract)

60. Humanix repeats and realleges each and every allegation pleaded in paragraphs 1 through 59 as if fully set forth herein.

61. As alleged herein, Humanix and McCaughey are parties to the Services Agreement.

62. Regnery was informed of the existence of the Services Agreement and that Publication of the Regnery Book would potentially violate the Services Agreement.

63. Despite knowledge of the Services Agreement, Regnery intentionally induced McCaughey to breach the Services Agreement by authoring and assisting in the publication of the Regnery Book in direct competition with the Work she created for Humanix.

64. By reason of Regnery's tortious interference with the Services Agreement, Humanix has been injured in an amount to be established at trial.

WHEREFORE, Humanix demands judgment as follows:

(a) permanently enjoining and restraining Defendants and all those acting pursuant to their direction and control and/or under license or authority from them, from distributing, reproducing, publishing, licensing, marketing, advertising, or otherwise disseminating the Regnery Book and the McCaughey Book or any substantially similar work pursuant to 17 U.S.C. § 502;

(b) awarding Humanix its actual damages and Defendants' profits from the infringement, in an amount to be determined at trial;

(c) granting Humanix such damages as it has sustained in consequence of Defendants' willful infringement of the Work;

(d) granting Humanix the profits Defendants obtained from their sale of infringing goods;

(e) granting Humanix such damages as it has sustained in consequence of McCaughey's breach of contract;

(f) granting Humanix such damages as it has sustained in consequence of Regnery's tortious interference with contract;

(g) granting Humanix the costs and disbursements of this action as well as reasonable attorney's fees; and

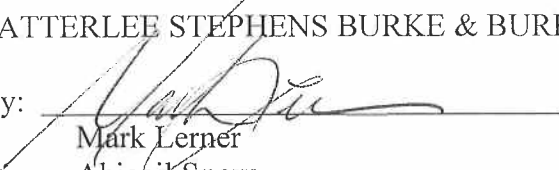
(h) granting Humanix such other and further relief as this Court deems just and proper.

Dated: New York, New York  
February 5, 2013

Respectfully submitted

SATTERLEE STEPHENS BURKE & BURKE LLP

By:



Mark Lerner  
Abigail Snow

230 Park Avenue, Suite 1130  
New York, New York 10169  
(212) 818-9200

*Attorneys for Plaintiff Humanix Publishing, LLC*

# EXHIBIT A



SERVICES AGREEMENT

This Services Agreement is made as of the 30<sup>th</sup> day of January, 2012 (the "Services Agreement"), between Humanix Publishing, LLC (the "Company"), a corporation with its principal place of business at 560 Village Boulevard, Suite 120, West Palm Beach, Florida 33409 and Betsy McCaughey (the "Author"), c/o RID, 1111 Park Avenue, New York, NY 10128.

**WHEREAS**, the Company desires the Author to write, and the Author is willing to write the book concerning ObamaCare under the working title, "How to Survive ObamaCare" (the "Book"); and to perform the "Services," as defined in Schedule A to this Services Agreement (the Book, together with the Services, the "Deliverables");

**NOW THEREFORE** in consideration of the promises hereinafter set forth and for valuable consideration, receipt whereof is acknowledged, the parties agree as follows:

1. Author shall perform the Services, subject to the terms and conditions set forth below.
2. The parties hereto agree that with respect to the Deliverables:
  - (a) Production of the "Initial Deliverables," as defined in Schedule A, shall be as follows:
    - (i) By the delivery dates set forth in Paragraph 2(a)(ii) hereof, Author shall provide the Initial Deliverables to the Company in digital format. The Initial Deliverables shall be deemed approved as satisfactory and acceptable unless, within ten (10) calendar days from the Company's initial receipt of the Initial Deliverables the same shall be rejected in a writing by the Company setting forth why they are not acceptable in content and form or do not meet the content and quality guidelines. The Author shall undertake reasonable additional revisions of the Book at no additional cost to the Company; provided that, in the event the Author refuses to make such revisions, the Company shall have the right, at its sole discretion, to such revisions, in whole or in part, in its sole discretion and without having first notified the Author, but any such modification, change or alteration shall be without prejudice and shall not affect the Author's liability under the Author's warranty and indemnity in Paragraphs 5 and 7, hereof, nor shall it affect the grant of rights under Paragraph 4 and 6 hereof.
    - (ii) The Author and the Company shall cooperate and provide the Deliverables on the following schedule: (A) no later than February 5, 2012, receipt by the Company of the Initial Deliverables from the Author, and (B) no later than five (5) calendar days after the Company requests the additional revisions referenced in Paragraph 2(a)(i) above or February 20,

2012, whichever comes first, completion by the Author of any additional revisions reasonably requested by the Company.

- (b) The Company agrees that (i) the Author's name shall, to the extent applicable, appear on the cover of the Book (including future editions and derivative products) as the sole author; (ii) the Author's photograph shall appear on either the front or back cover of the printed edition of the Book (including future print editions); (iii) it shall render semi-annual statements of account in duplicate and to make due financial payments hereunder on or before April first and October first of each year covering sales to the preceding January first and July first, respectively; (iv) in the event of Publication (defined in Paragraph 3 hereof) of the Book, the Company shall give the Author one hundred (100) copies of the Book and five (5) free downloads; and (v) in connection with the Publication, only to the extent permitted by the Company's carrier and only at reasonable cost to the Company, it shall add the Author as an additional insured to any of its media perils insurance or other insurance policies covering its or its affiliates' publications, and in the event of such addition, the Company shall provide proof to the Author that the Author has been so named on the subject insurance policies.
- 3. As full compensation for the Deliverables, the Company will make a non-refundable payment to the Author of \$5,000 immediately upon execution hereof (the "Initial Payment") and, thereafter, the Company will pay those additional fees (the "Fees") according to Schedule B, but only in the event of publication by the Company of the Book for commercial sale (the "Publication"). The Company shall have the sole discretion to decide whether to publish the Book. The Author acknowledges and agrees that its sole financial compensation in connection with the Company's exploitation of the Services and the Deliverables shall be as expressly specified herein.
  - 4. TIME IS OF THE ESSENCE FOR PRODUCTION OF THE DELIVERABLES, as set forth in Paragraph 2 hereof.
  - 5. Author warrants and represents that:
    - (a) Author has full power and authority to make this Services Agreement and to grant the rights granted hereunder (including, without limitation, the unfettered right to authorize the publication of the Book), and Author has not previously assigned, transferred or otherwise encumbered the same, nor does this Services Agreement in any way conflict with any existing commitment that would cause Author to be unable to enter into and fully provide the Deliverables and grant the rights specified by this Services Agreement;
    - (b) The Initial Deliverables (i) are original, have not been previously published, are not in the public domain (other than materials to which Author

may cite or otherwise reference in the Book); (ii) do not infringe any statutory or common law copyright, invade the right of privacy or right of publicity of any third person, or contain any matter libelous or otherwise in contravention of the rights of any third person; (iii) contain no matter which is obscene or matter the publication, distribution or sale of which otherwise violates any federal or state statute or regulation thereunder, nor is it in any other manner unlawful; and (iv) and are true (but only to the extent they contain statements purporting to be facts).

- (c) The Company shall be under no obligation to make an independent investigation to determine whether the foregoing warranties and representations are true and correct, and any independent investigation by or for the Company or its failure to investigate, shall not constitute a defense to Author in any action based upon a breach of any of the foregoing warranties; and
- (d) The warranties and representations of Author hereunder are true on the date of the execution of this Services Agreement and on its Publication. The Company may rely conclusively on the truth of the warranties and representations herein in dealings with any third party in connection with exercise or disposition of any rights in the Deliverables.

6. Author covenants and agrees that:

- (a) Author (i) is an independent contractor and, as such, is solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments which may be required by federal, state or local law with regard to any sums paid to Author according to this Services Agreement; and (ii) is not an employee of the Company, is not entitled to participate in any benefit programs or plans of the Company and will do nothing to claim otherwise;
- (b) The Company, its subsidiaries, affiliates, successors and assigns, its legal representatives and those acting with their authority and permission: (i) except as provided in Paragraph 2(b) hereof, may, but shall not be required to, use the credit, title or Author's name, voice, image, likeness and biographical material in all media worldwide without further compensation for any purpose as the Company deems appropriate, in connection with the Book, and for attribution of the Author as sole author of the Book; (ii) has full rights and Author's permission (A) to record (audio and video) Author at any event either sponsored by the Company or regarding the Book, even if not sponsored by the Company (collectively, the "Footage"); (B) to copy, display, distribute, broadcast and perform the Footage recording for any purpose, whether or not in connection with or related to the Book; and (C) as the Company sees fit in its sole discretion, to edit the Footage and Author's performance and any of and Author's statements contained therein, or not to use the Footage or any

part thereof; and (iii) is hereby granted a full waiver of any rights Author may have to inspect or approve the Footage (or the written or spoken copy thereof) or other matter that may be used in connection therewith or the uses to which it is applied, including (without limitation) whether or not there should be any promotion or advertisement of the Book, and the means, content or media for and such any promotion or advertisement; Notwithstanding the foregoing, nothing in this paragraph shall be construed as suggesting that Author is anything other than the sole Author of the Book, and Author shall be identified as the author of the Book in any such uses or footage;

- (c) The Deliverables and any materials the Supplier may create pursuant to this Services Agreement are and will be “works made for hire” within the meaning of the U.S. copyright laws. To the extent, for any reason, that any such material does not qualify or otherwise fails to be a work made for hire, the Supplier hereby assigns to the Company whatever right, title and interest the Supplier would otherwise have in any intellectual property or other rights throughout the world in such material, including but not limited to all copyrights (and all renewals, extensions, reversions and continuations thereof) in the U.S. and throughout the rest of the world, and any other rights needed to ensure the Company’s exclusive right to publish, print or otherwise reproduce, distribute and sell the relevant work in any media and to exercise any subsidiary rights therein, and the Supplier shall take any and all actions necessary to ensure such rights are so assigned;
- (d) So long as this Services Agreement is in place and at all times thereafter, the Author will refrain from (i) disparaging, spreading malicious gossip or rumors about, or engaging in behavior which improperly creates discord and lack of harmony regarding the Company or any principal, affiliate, associate, employee, or representative of the Company, or the Book (or the subject matter of any of the foregoing); and (ii) providing any services (including any similar to or in the nature of any of the Services) with respect to, authoring, publishing or contributing to any other work or content, for any media and in any geographical territory, whether or not commercially sold or available only through private subscription, which is in direct competition with the Book; provided, however, that the Company recognizes and acknowledges that Author is a media and political figure who frequently appears in the media and the press and, except as provided herein, the Author (x) is not prevented from continuing to speak, lecture, write or otherwise communicate about or discuss in any venue or setting any political, health care, government, medical, or financial issues including, but not limited to, ObamaCare, and (y) is, within such context, permitted the right to quote freely from the Book; and
- (e) The Author shall execute and deliver to the Company any and all documents which the Company reasonably deems necessary or appropriate to evidence or effectuate the rights granted in this Services Agreement.

7. The Supplier will hold the Company, its subsidiaries, affiliates, successors and assigns, its legal representatives and those acting with their authority and permission, and its licensees, harmless from and on account of any losses, expenses, reasonable attorneys fees, costs and judgments that may result from the Supplier's breach of any of the foregoing representations, warranties and covenants.
8. Each of the foregoing representations, warranties and covenants in Paragraphs 5, 6 and 7 herein shall survive the termination of this Agreement.
9. The Company may terminate this Services Agreement, upon five (5) business days prior written notice to Author as a result of one or more of the following events:
  - (a) The Author becomes, in the sole judgment of the Company, unable or unwilling to fulfill the Services specified in Schedule A hereto;
  - (b) The Author fails or refuses to provide the Services as satisfactory or acceptable to the Company pursuant to the terms of this Services Agreement or on the due date stipulated in Schedule A or such other date as may in the Company's reasonable discretion be agreed by the Company in writing; or
  - (c) Any other material breach of any of the covenants or warranties of Author contained herein, or
  - (d) Any refusal or failure by the Author to make revisions as described in Paragraph 2 hereof;

in which case, this Services Agreement shall terminate and thereafter neither party shall have any further obligation or liability to the other hereunder; provided that the Author shall be under no obligation to return the Initial Fee or any other monies already paid to or already due and owing to Author by Company.

10. Any notice required or permitted to be given under this Services Agreement shall be properly given by a party if it is sent within the time specified herein: (a) via confirmed receipt email delivery (i) in the case of the Author, to Betsy@hospitalinfection.org and (ii) in the case of the Company, to Tony Grogan tonyg@newsmax.com, or (b) via personal, by-hand delivery, to the respective address for the other party set forth above.
11. This Services Agreement sets forth the entire agreement between the Company and the Author, supersedes any prior agreement or understandings, whether oral or written, and may not be modified or amended except in writing signed by both parties. Each party confirms that it has not relied upon any representation not recorded in this Services Agreement save that this clause shall not apply to any statement representation or warranty made fraudulently.



12. This Services Agreement shall be construed in accordance with and governed by the laws of the State of New York, without regard to conflict of laws principles, except as to copyright and trademark matters which shall be governed by the laws of the United States. Exclusive jurisdiction of all disputes hereunder shall lie in the federal and state courts sitting in the State of New York.
13. The invalidity or unenforceability of any provisions of this Services Agreement shall not affect the validity or enforceability of any other provisions which shall remain in full force and effect.
14. No failure or delay on the part of either party to exercise any right or remedy under this Services Agreement or any single or partial exercise of such right or remedy shall be construed as a waiver thereof.
15. No provision in this Services Agreement is intended to be enforceable by a person who is not a party to this Services Agreement. This Services Agreement is personal to the Author but the Company expressly reserves the right to assign, subcontract or sublicense its rights and obligations under this Services Agreement in whole or in part.

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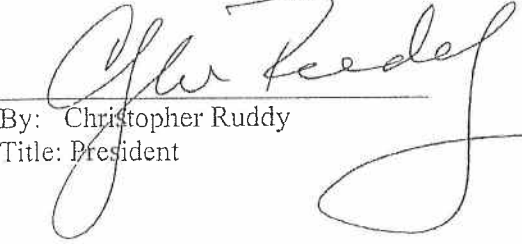
IN WITNESS WHEREOF, the parties have each caused this Services Agreement to be executed personally or on its behalf by its duly authorized officer as of the date first above written.

COMPANY:

Humanix Publishing, LLC

AUTHOR:

Betsy McCaughey

  
By: Christopher Ruddy  
Title: President

\_\_\_\_\_  
Betsy McCaughey

\_\_\_\_\_  
SS/Taxpayer Identification Number

Attachments: Schedules A and B

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**Page 7**

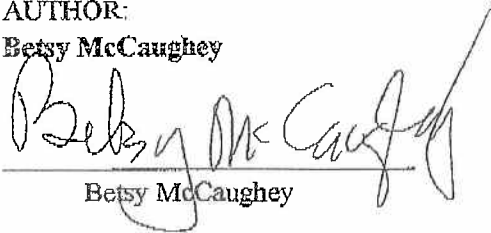
**IN WITNESS WHEREOF**, the parties have each caused this Services Agreement to be executed personally or on its behalf by its duly authorized officer as of the date first above written.

**COMPANY:**  
**Humanix Publishing, LLC**

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By: Christopher Ruddy  
Title: President

**AUTHOR:**  
**Betsy McCaughey**



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Betsy McCaughey

## SCHEDULE A

### Description of Services and Deliverables

Author agrees to perform the following Services for the Company in connection with the publication of Author's Book, satisfactory in all respects to the Company:

1. "Drafting" of the Book (as defined in the accompanying Services Agreement), and
2. "Editing Services":
  - (a) editing, copy editing and proofreading (including, without limitation, spelling, punctuation, typing, content, and grammar) of the Book;" provided that, editing and review of diagrams, spreadsheets, graphs, photographs, or other artwork (including, without limitation, frontispiece, cover, back cover and dust jacket) shall be included within the scope of the Editing Services;
  - (b) preparing, providing and integrating additional text, content and materials (including, without limitation, diagrams, spreadsheets, graphs, photographs, or other artwork (including, without limitation, frontispiece, cover, back cover and dust jacket text)) as may be necessary to provide consistency and substance for the Editing Services and to complete the Book as acceptable and satisfactory for commercial publication. Notwithstanding the foregoing, but without limiting any of the Author's representations set forth in Paragraph 5 of the Services Agreement, nothing about this Services Agreement shall require Author to expend monies on the acquisition of any rights to photographs or images in any respect.

The Drafting and the Editing Services shall be referred to, collectively, as the "Initial Deliverables."

Author shall have the right to reject any editorial changes proposed by the Company provided that, (x) Initial Deliverables performed by the Author will be deemed "satisfactory" or "acceptable" to the Company if, in the Company's sole judgment, it is complete and satisfactory in content and form and meets all content and quality guidelines, as well as all specifications provided by the Company to the Author; and (y) "delivery to the Company" shall mean transmission via the internet at the Company's email address or delivery by hand or in person at its offices, as provided in the Agreement (or by such other means as the Company may instruct in writing).

3. "Promotional Services":

- (a) be reasonably available at such times and places as the Company may, in its reasonable commercial discretion, designate upon no less than ten (10) calendar days' advance written notice (and at the Company's sole cost and expense) in order to devote its full time and attention to such schedule, activities and purposes as the Company may direct without conflicting activities; for the avoidance of doubt, these Promotional Services (i) shall not commence until the Publication and shall last no more than four (4) consecutive calendar weeks, and (ii) may include travel (without limitation, by ground and air) and personal appearances and attendance, or any other duties and activities, outside of normal business hours;
- (b) following the initial four (4) week period described above, be available at such times and places as the Company may, in its sole discretion, designate upon reasonable advance written notice (and at the Company's sole cost and expense) in order to conduct, engage or otherwise participate in interviews, in any broadcast media (including, without limitation, radio, telephone, television, video or internet-based), for any manner of publication (including, without limitation, in print), and either live or on tape or other manner of recording;
- (c) during the period commencing at Publication and ending on December 31, 2012, Author shall work in good faith to try to include a supportive reference to the Book and, as applicable, identify herself as author of the Book, as part of conducting, engaging or otherwise participating in any interviews or any manner of personal appearance, in any broadcast media (including, without limitation, radio, telephone, television, video or internet-based), for any manner of publication (including, without limitation, in print), and either live or on tape or other manner of recording.

**SCHEDULE B**

**Description of Fees and Payment Provisions**

1. The Author will be entitled to receive the following Fees for each individual copy of the Book:

- (a) sold through any outlet or means (other than as set forth in clauses (b) and (c) of this Paragraph 1, a "Retail Sale"), \$0.75;
- (b) sold through download, application or other digital access and whether or not through a specific eBook provider (an "eBook Sale"), \$0.50; and
- (c) sold or otherwise transferred by the Company, its employees, subsidiaries, affiliates, successors and assigns, its legal representatives and those acting with their authority and permission, as part of a premium, a bonus or an incentive for enrollment in any subscription service offered by the Company, its employees, subsidiaries, affiliates, successors and assigns, its legal representatives and those acting with their authority and permission (a "Subscription Sale"), \$0.25.

2. If the Book appears within the top fifteen (15) books on *The New York Times*' bestsellers' list, as set forth exclusively on <http://www.nytimes.com/best-sellers-books/overview.html>, then the Company agrees to pay \$5,000 in total to the Author for that week. For each week, Company shall pay a \$5,000 bonus in total for each such weekly appearance by the Book on that list with a total cap of \$25,000 for the term of this Services Agreement. In other words, the Company shall not be required to pay to Author more than \$25,000 total under this bestselling book bonus section; for the removal of doubt, that the Book may be included on the list for more than one category during a week shall count only once and shall not entitle the Author for more than \$5,000 in total for that week.

# **EXHIBIT B**



## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

Registration Number  
**TXu 1-839-263**

Effective date of  
registration:

January 17, 2013

### Title

**Title of Work:** ObamaCare Explained: What the Nation's New Health Care System  
Means For You

**Previous or Alternative Title:** How to Survive Obamacare

### Completion/Publication

**Year of Completion:** 2012

### Author

■ **Author:** Humanix Publishing, LLC

**Author Created:** text

**Work made for hire:** Yes

**Citizen of:** United States

**Domiciled in:** United States

### Copyright claimant

**Copyright Claimant:** Humanix Publishing, LLC

560 Village Boulevard, West Palm Beach, FL, 33409, United States

### Rights and Permissions

**Organization Name:** Humanix Publishing, LLC

**Address:** 560 Village Boulevard

West Palm Beach, FL 33409 United States

### Certification

**Name:** Mark Lerner

**Date:** January 17, 2013

**Applicant's Tracking Number:** 106532/10

**Correspondence:** Yes